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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1952.

No. 446

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 406, PAT MACKEY, JACOB DERTIEN and ROBERT SWITZER,

Petitioners,

vs.

HAROLD F. POSTMA, Doing Business as HAROLD F. POSTMA GRAVEL COMPANY, H. F. POSTMA GRAVEL CO., a Michigan Corporation,

Respondents,

CLARENCE De BOER, LEONARD LOVINS, FLOYD FREEMAN, DAVID VANDER KOOI, FLOYD J. POSTMA, FREDERICK J. KATSMA, FRANK DIEPSTRA, JR., LOUIS HOEZEE, HAROLD DUNHAM and JOE POSTMA,

Intervenors.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

To the Honorable, the Justices of the Supreme Court of the United States:

The above-named petitioners respectfully pray that a Writ of Certiorari issue to review the decision and judgment of the Supreme Court of Michigan, entered in the above-entitled case on the 3rd day of September, 1952.

OPINIONS BELOW.

The opinion of the Circuit Court for Kent County, In Chancery (R. 260-269), is unreported. The opinion of the Michigan Supreme Court is reported in 334 Mich. 347, 54 N. W. (2d) 681 (Adv. Op.), and appears at R. 272.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257 (3) of Title 28, U. S. C. In this case a judgment of the Supreme Court of the State of Michigan and a Michigan Statute, Section 423.17, C. L. 1948 (as amended by Act No. 230, P. A. 1949), Michigan Statutes Annotated, Section 17.454 (18), upon which such judgment is purportedly based, are drawn in question upon the ground that said statute as applied in the instant case and as construed in the opinion and judgment of the Supreme Court of the State of Michigan, and the judgment on its face are repugnant to Section 1 of the Fourteenth Amendment to the United States Constitution, in that they deprive petitioners of liberty without due process of law, and deprive petitioners of the equal protection of the law.

The decision of the Michigan Supreme Court, the last resort of all causes in the State of Michigan, was in favor of the validity of the statute as applied in the instant case and in favor of the validity of the judgment.

Petitioners argued before the Circuit Court for the County of Kent, In Chancery (Defendants' Answer at R. 24 and 27), and before the Supreme Court of the State of Michigan (Decision at R. 274-275, 277) that Michigan Statutes Annotated, Section 17.454 (18), as applied to the instant case, is unconstitutional and void and of no effect whatsoever, because it is repugnant to the provision of the

United States Constitution referred to immediately herein above, and that any judgment of the Supreme Court of the State of Michigan affirming the decree of the Circuit Court would deprive petitioners of basic constitutional rights (including the right of free speech) guaranteed under Section 1 of the Fourteenth Amendment to the United States Constitution.

The Federal question of whether the Michigan Statute in question, and the judgment purportedly based on said statute, violated the Constitution of the United States was raised, therefore, before every tribunal before which argument was heard.

The Supreme Court of the State of Michigan held that neither the statute nor the judgment based on such statute as construed, deprives the petitioners of any rights guaranteed under the Constitution of the United States.

In its decision the Michigan Supreme Court ruled:

> "Under the authorities cited we are obliged to hold that the permanent injunction entered by the Circuit Court does not violate any of the constitutional rights of the defendants" (R. 277).

Thus the Michigan Supreme Court has held that the State of Michigan can validly prohibit all picketing when a purpose to protect union standards is joined with a purpose to enroll non-union employees into the union, and that such prohibition of peaceful picketing is not in violation of the Fourteenth Amendment to the Constitution of the United States.

A copy of the entire Record in this case as certified to be true and correct by the Clerk of the Michigan Supreme Court is hereby furnished and made a part of this application, in compliance with Rule 38, Paragraph 1, of the Rules of this Court.

QUESTION PRESENTED.

Whether a State may by statute or judicial decree prohibit peaceful picketing for organizational purposes.

(Implicit in such question is the further question of whether the state may make it a criminal offense for any individual to engage in such peaceful picketing for organizational purposes, since, although these proceedings were in equity, the statute involved imposes criminal penalties.)

STATE STATUTES INVOLVED.

The pertinent state statutory provision is Section 423.17 of the Compiled Laws of the State of Michigan, 1948 [Michigan Statutes Annotated, Section 17.454 (18)], which reads as follows:

> "**Use of force or unlawful threats with respect to labor organization membership or to force person to refrain from employment; penalty.** It shall be unlawful (1) for any employee or other person by force or unlawful threats to force, or attempt to force, any person to become or remain a member of a labor organization, or (2) for any employee or other person by force or unlawful threats to force or attempt to force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such."

STATEMENT.

The petitioner, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 406, hereinafter referred to as "The Union" or "Local 406," is an unincorporated, voluntary labor organization. The individual petitioners are officers and members

of the Union who were sued both individually and as officers and members of the Union.

The respondents, Harold F. Postma and H. F. Postma Gravel Co., a Michigan corporation, are engaged in the cement, sand and gravel business in Grand Rapids, Michigan. Both such respondents are hereinafter referred to as the "Employer" or the "Company." Intervenors are employees of the Company.

The Union represents most of the employees in the cement, sand and gravel industry in the metropolitan area of Grand Rapids, Michigan, for the purpose of collective bargaining with the Grand Rapids Gravel Co., Rocks Sand and Gravel Co. and Pekaar and Van Dorn Gravel Co., competitors of the respondent Company (R. 188, 196-198, 213-217). None of the employees (intervenors) of the Company are members of the Union. Accordingly, no attempts have been made by it to bargain with the Company as the representative of the Company's employees (R. 53, 54), for the stated reason that under the law it could not lawfully negotiate with the Company on behalf of its employees until such employees had designated the Union to represent them (R. 231, 232). The Union has made numerous attempts to persuade respondents' employees to join their organization [Plaintiffs' Bill of Complaint, paragraph 4 (R. 9); Intervenors' Bill of Complaint, paragraphs I and IV (R. 32, 33); Defendants' Exhibit I (R. 246) (R. 190)]. The trial court expressly so found (R. 260).

In February, 1950, the Union's collective bargaining agreements with competitors of the Company expired by their terms (R. 144, 194). Negotiations were started to renew those agreements, the Union asking for wage increases for its membership, primarily to bring the rates of pay up to the prevailing wages for other truck drivers in the area (R. 144, 214, 219). Those negotiations broke down,

the employers claiming that they would be unable to continue even some of the working conditions then prevailing under the expired agreements, such as guaranteed daily pay, since the respondent Company was paying rates as low as 82¢ per hour and was making it impossible for the other employers in the area to compete fairly with the respondent Company (R. 147, 161, 170, 194-198, 214, 248). It is admitted that the employees of the Company do not receive many of the guarantees which the organized employees receive such as minimum daily hours of work, daily overtime, etc. (R. 146-147, 203-206, 207-210, 213-214, 226; Defendants' Exhibit 3).

Because of this stalemate in negotiations an officer of one of the competitors called a meeting of all gravel producers in the area. This meeting was held in his offices (R. 157-159). The competitors and the Union attorney were invited to attend (R. 158). Respondent Postma also attended on the invitation of one of his competitors (R. 49, 91, 159). The problems raised by the difference in wage rates were presented and discussed, but no solution was advanced by any one present (R. 160-161, 237-238).

Respondent attempted to characterize the Union attorney's presence at the meeting as representing an effort to have all gravel companies enter into a uniform agreement with respect to wage rates (R. 52, 94), but admitted this was an "assumption" or "conclusion" (R. 95) and was based upon discussions among the businessmen after the attorneys left (R. 96). An officer of one of the gravel companies testified that no employer was required to sign a Union contract, nor was any request made that the employers organize their men and cause them to come into the Union (R. 165). The Union attorney also so testified (R. 237-238). Respondent's testimony in this regard was characterized by the trial judge as being "vague, uncertain and indefinite and intangible" (R. 163).

As a result of lack of progress in negotiations the Union's members, who were employed at the gravel companies that were under contract with the Union, met and requested the Union officers to publicize the facts concerning the conditions at Postma Gravel Company (R. 200-202). In compliance with that request petitioners established a picket line in front of Company on the morning of August 3, 1950, and made plans to publicize the facts concerning the Postma Gravel Company and its employees in the next issue of the labor press (R. 203, 206, 217-218, 226, 228-229, 229-230).

The picket line was composed of two members of the Union walking abreast or single file along the shoulder of the public highway and carrying signs stating, "This Company Unfair to Organized Labor," followed by the name of the petitioner Union (R. 54, 55). This language was intended to embrace the non-union employees as well as the Company, because of the lower wage rates and less desirable working conditions which prevailed at the Company (R. 205-206). The petitioners stated their willingness to change the language of the sign to more accurately set forth the information they desired to convey (R. 206).

The picketing was entirely peaceful and conducted within 15 to 20 feet of the paved portion of the highway on the shoulder used by the public in walking by respondent's plant (R. 78, 81, 84, 87).

Many customers of the respondents came to the property which was being picketed to do business with the respondents (R. 104). The picketing took place only during business hours of 7:00 A. M. until 5:00 P. M. (R. 55).

The purpose of the picketing was to advise the public that the Union considered the Company "unfair" because it was paying a lesser wage, in the hope that people who were favorable to the Union cause would be encouraged to place their orders with those companies which were paying

the higher Union standards of wages and working conditions that existed in the area (R. 203, 205). The picketing was also for the purpose of publicizing the dispute with the Company's employees who were holding the members of the Union back in getting better conditions (R. 217, 225, 226, 229). Those employees were considered "free riders," because they were getting advantage of the efforts of the Union by receiving the benefits without joining the organization (R. 230). While the Union contract does not prevent the payment of higher wages than the minimums set forth, the Union did not want competition to be based on "wage chiseling" (R. 212, 233, 235). The Union was not looking for a monopoly, since there are many unorganized people in the Grand Rapids area (R. 235).

Whether any Union member would cross the picket line for any purpose was a matter of individual choice for each such member (R. 225).

Bulk cement used by the Company in its operations was delivered to it by five cartage companies from other parts of the state (R. 45). These companies have no contractual relationship with the Company (R. 60, 61, 65). The employees of some of those cartage companies were members of other labor unions (R. 57, 63, 64, 65, 66). Because of the expense involved to the cartage companies if some of their employees would refuse to cross a picket line and return with their loads of cement, those companies had requested local business representatives of the particular union representing their employees to notify them, as an accommodation, whenever a picket line existed (R. 60, 63, 64, 68). This was a matter of Company policy (R. 59) and based on past experience (R. 62). Aware of this situation, petitioner Mackey notified the business representative in Muskegon and Bay City, Michigan, where the cartage companies were located, that a picket line had been established at the Company (R. 211). Three of the companies making

deliveries to the respondent were accordingly notified, as requested, by their local union representatives of the existence of a picket line at respondents' place of business (R. 57, 61, 65). The companies had also heard about the picket-line from other sources (R. 60). Knowing the attitude of their own employees, they decided voluntarily not to send any loads to the Company (R. 57-60, 61-63, 65-68).

The Company made no effort of any kind to arrange for other means of getting shipment of cement or to pick up such cement with its own vehicles (R. 89).

On September 5, 1950, a contract settlement was arrived at between the Union and two of respondents' competitors establishing a new wage rate and working conditions and providing for an increase for drivers to $1.59 per hour in June of 1951 **provided that Postma Gravel Company, the respondent herein, and the other competitors were by that time paying the same rates** (Defendants' Exhibit 3, R. 252). A similar contract was being negotiated with Pekaar and Van Doorn Gravel Company whose employees had selected the Union as their collective bargaining representative in a secret ballot vote (R. 215-216).

During the time of the Union's attempt to organize the Company's employees the Company granted wage increases which approached the uniform minimum wage scale incorporated in the appropriate collective bargaining agreements in the area (R. 109, 122, 134, 178). Such employees, however, do not operate under a collective bargaining agreement, have no seniority rights, no procedure for adjustment of grievances, no guarantees, no overtime pay for Saturday afternoons or after eight hours a day, etc. (R. 75, 109, 113, 134, 178). The Union agreement provides for such conditions of employment (Exh. 3, R. 248).

Further than that, the current agreements in the sand and gravel industry provide for wage rates which are less

than those prevailing in other truck driving fields (R. 209-210). The principal reason for the unfavorable differential is the fact that the employees of the respondent Company are not represented for the purposes of collective bargaining by the Union (R. 109-110, 134, 178, 196, 228-230).

An ex parte restraining order was issued by the Circuit Court for the County of Kent in this cause on August 8, 1950, restraining petitioners from any activity in connection with this dispute; whereupon the Union withdrew the two pickets and cancelled its plans to publicize the facts concerning the Company and its employees in the labor press (R. 236).

On June 28, 1951, after trial, the temporary restraining order was made permanent (R. 267-269).

On September 3, 1952, the decree of the Circuit Court was affirmed by the Michigan Supreme Court. The decree, as affirmed, provides as follows (R. 267-269):

> "It Is Ordered, Adjudged and Decreed that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 406, its officers, agents and employees, Pat Mackey, Jacob Dertien and Robert Switzer, defendants herein, be and are hereby permanently, absolutely and entirely restrained and enjoined from:
>
> "(1) Picketing or causing to be picketed the place of business of plaintiff company, same being presently located at 2777 28th Street, S. W., Wyoming Township, Kent County, Michigan.
>
> "(2) Engaging in or inducing or encouraging the employees of any employer to engage in a concerted refusal in the course of their employment to use, furnish, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform

any services for the purpose of preventing the delivery of such goods, articles, materials or commodities to or from the plaintiff company.

"(3) Inducing or encouraging employers other than plaintiff company to engage in a concerted refusal to furnish and deliver or to cause their employees not to furnish and deliver supplies or goods to or from the plaintiff company.

"(4) Threatening or ordering boycotts against persons supplying goods and materials to plaintiff company or making deliveries of such goods or materials to or from the plaintiff company, or purchasing goods from plaintiff company or selling goods to plaintiff company."

SPECIFICATION OF ERRORS.

The Supreme Court of the State of Michigan erred:

1. In holding that the decree of the Circuit Court for the County of Kent permanently restraining petitioners from engaging in peaceful picketing was valid and not in violation of the rights of the petitioners as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. In holding that Section 423.17 of the Michigan Statutes, as applied to the instant case, was not in contravention of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States, and, therefore, not void in such application.

REASONS FOR GRANTING THE WRIT.

The Judgment and the Statute as Construed and Applied Are in Violation of Rights Secured to the Petitioners by the Fourteenth Amendment to the Constitution of the United States.

Since the decisions of this Court in the cases of **Carpenters & Joiners Union v. Ritter's Case**, 315 U. S. 722; **Giboney v. Empire Storage & Ice Co.**, 336 U. S. 490; **Hughes v. Superior Court**, 339 U. S. 460; **International Brotherhood of Teamsters v. Hanke**, 339 U. S. 470, and **Building Service Employees International Union v. Gazzam**, 339 U. S. 532, there has been a growing tendency on the part of state courts to utilize the device of "unlawful labor objective," or to limit the definition of "labor dispute," as a purported justification for the restraint of peaceful picketing. The improper use of such device and limitation is well illustrated here.

A state statute which makes it unlawful "by force or unlawful threats to force or attempt to force" employees to become or remain a member of a labor organization has been construed and applied by the Michigan Supreme Court to embrace within its terms peaceful picketing directed at, and for the purpose of organizing, non-union employees, absent any credible evidence or finding that such picketing was for the purpose of compelling the **employer** to unlawfully interfere with the rights of its employees to refrain from joining a labor organization or to otherwise violate any law of the state.

Neither the trial court nor the Michigan Supreme Court found, nor could they find on the Record, that the picketing was pursuant to any unlawful demand made upon the employer. (Although this particular issue was framed by the pleadings, in apparent reliance on a single incident

which occurred prior to the picketing, neither the lower court nor the Michigan Supreme Court gave any weight to the testimony which was adduced to support such claim [R. 163, 273]. The incident related only to an alleged demand for a uniform, industry-wide contract—and did not involve any alleged demand for compulsory union membership imposed by the employer and the Union without consent of a majority of the employees.)

Nor is there any finding or suggestion in the Michigan Supreme Court's opinion that any improper means of picketing or pressure was used. It was the bare fact of peaceful picketing with which that court was concerned.

The Michigan Supreme Court's conclusion, therefore, that petitioners' objective was to **force** the respondent Company's employees to become members of the Union, without any finding that such result was to be achieved through unlawful demands or other than by peaceful picketing demonstrates the lengths to which State Courts are going in depriving labor unions and their members from using traditional, peaceful methods of communication.

Implicit in the Michigan Supreme Court's decision is this type of reasoning:

(1) The picketing was for the principal purpose of persuading non-union employees to join the Union.

(2) Admittedly such picketing will continue until such employees join with their fellow workers in the same industry.

(3) Admittedly the employer and the non-union employees had suffered and will continue to suffer some economic injury as a result of such picketing.

(4) The picketing, therefore, is for the purpose of **forcing** the employees to become members of the Union.

(5) Since the Michigan Statute prohibits "forcing" any person to become or remain a member of a labor organization the picketing is, therefore, in furtherance of an unlawful labor objective, is in violation of the statute, and, therefore, may properly be subject to absolute restraint.

It is submitted that the mere statement of the syllogism demonstrates its basic inconsistency with the decisions of this Court in the following cases: **American Steel Foundries v. Tri-City Central Trades Council**, 257 U. S. 184, 209; **Thornhill v. Alabama**, 310 U. S. 88; **Carlson v. California**, 310 U. S. 106; **American Federation of Labor v. Swing**, 312 U. S. 321; **Bakery and Pastry Drivers v. Wohl**, 315 U. S. 769; **Cafeteria Employees Union v. Angelos**, 320 U. S. 293.[1]

Nor can the action of the Michigan Supreme Court be squared with the reservations and distinctions made by this Court in the **Building Service Employees International Union (Gazzam)** case, supra, in which it was emphasized that the state court decree there involved was not an "injunction against picketing generally" (p. 536), did not "prohibit picketing of workers by other workers" (p. 539), and did not have the effect of restraining "picketing directed at employees for organization purposes" (pp. 539-540). The statute and decree in the instant case are and do precisely those things.

It is apparent from the Michigan Court's opinion that the Court was not concerned with either the method of picketing, the number of pickets, the legend on the picket sign, the voluntary act of others who stopped making deliveries, or any alleged attempt to enlist the support of the

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[1] See also **N. L. R. B. v. International Rice Milling Co.**, 341 U. S. 665, at 671: "The picketing was directed at the Kaplan employees in a manner traditional in labor disputes"; **In the Matter of Local 74, United Brotherhood of Carpenters and Joiners of America, A. F. of L.**, 80 N. L. R. B. 533, 547: "This is not to say that, because the picketing brought some results in loss of business to the employers, it follows that the employees, in order to protect their jobs, were forced to join the union, especially where no threats were involved."

employer to put his employees into the Union against their will. The Court was concerned only with the admitted intention of continuing such picketing until the non-union employees joined the Union (R. 276). Because this attempted persuasion of the non-union employees was carried on by "picketing" it was considered by the Court to be synonymous with the term "force" as used in the Michigan Statute.

The persuasive factor was stated by the Michigan Court to be the Union's intention to pursue its objective of enrolling a majority of the employees into membership even if the employer was paying "as much or more than the uniform wage scale" (R. 276). Yet the ban on picketing is not so limited and prohibits picketing for the more limited objective of bringing wages and working conditions to union levels.

Even if the injunction is to be narrowly construed so as to prevent picketing carried on only in furtherance of an objective of attaining organization of the employees, there is no reasonable basis for such restraint.

To say that members of a labor union have no legitimate interest in organizing the non-union worker if the non-union worker is getting the same or a higher wage scale is to disregard the economic realities of such situation.

In the first place, "wage scale" is but one facet of the employment relationship in which union members or organized employees are interested. It certainly is not the only one. The Union contract in evidence here (Def. Exh. 3, R. 248) details other important conditions of employment such as grievance procedure, seniority, hours of work, premium and overtime pay, vacations, minimum daily guarantees and call-in pay. Some of these conditions, such as the handling of grievances and seniority protection, cannot be measured in monetary terms or equated with other condi-

tions. Yet, unless there is a grievance procedure for the purpose of adjusting complaints of alleged failure to comply with the agreed-to terms of employment there can be no assurance of maintenance of standards. Similarly, the absence of seniority protection must necessarily affect other employees and employers in the industry and tend to destroy the ability of the Union to maintain such standards.

Secondly, assuming that the Michigan Court intended to embrace non-wage matters under the term "wage scale," nevertheless, the very absence of a formal instrument in writing, fixing conditions as a matter of contract right for a definite period of time, constitutes a pervading threat to the Union conditions established by contract in the balance of the industry. Obviously, absent a written collective bargaining agreement, there can be no assurance that the unorganized employees who today may receive substantially all of the improved working conditions will continue to do so tomorrow. At the very point that uniformity or parity becomes most significant—in the competition for jobs—the employer may unilaterally make such downward adjustments as will be advantageous to him in such competition and thus jeopardize the opportunity of the union members to secure employment as well as endanger their ability to maintain their better conditions in the future. The Michigan Supreme Court thus, in proposing, in effect, a **day-to-day test** to be applied to determine the validity of picketing has completely destroyed the effective exercise of such right.

That the Michigan test is a **day-to-day test** is obvious. Today the Union may learn of the substandard conditions and picket to publicize that fact. The employer then makes what he believes to be the necessary upward adjustments. At that point, according to the Michigan Court, the right to picket is lost. Yet, with the withdrawal of the picket line, the employer may readjust downward. There is no way

that such downward readjustment can be effectively prevented, since there is neither a collective bargaining agreement which can be enforced nor are there Union employees to answer a strike call. When the Union learns of the downward readjustment it can again start picketing. This process can be interminable. The substance of the right is thus, for all practical purposes, lost.

The substance of the right is also lost if the determination of whether the working conditions at the non-union plant equate those prevailing under union contract is to be finally determined in the courts as the Michigan Court attempted to do. How are the courts to weigh and equate all of the varying terms of employment found in a union contract with the conditions at a non-union plant without, in effect, substituting their judgment for the processes of collective bargaining? Uniformity may not necessarily be the touchstone, since conditions and circumstances may vary from plant to plant.[2] The right of collective bargaining and to enter into a collective agreement is of greater importance than the precise term of the agreement finally entered into since without such right there can be no agreement. Such right is the basis of federal labor relations policy. Labor Management Relations Act, 29 U. S. C. A., Sec. 141.

Finally, the legitimate self-interest of the Union members require protection against the "free rider"—the non-union employee in the non-union plant who may get all of the benefits of the higher union conditions without paying his fair share of the cost of attaining such conditions and

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2 "Thus, it is not material in determining the legal propriety of the demands that the union demands a higher wage from one employer than another, that it demands a closed shop from one employer without demanding it from others, or that it seeks a system of seniority in one plant without requesting it in another. Labor bargains are not all made at once. The issue of discrimination in demands, like the issue of their fairness, is left to the market and is not an issue in the law of torts." IV Restatement of the Law, Torts, Ch. 38, p. 120.

without assuming his fair share of the sacrifices involved, through strikes and otherwise, which make such better conditions possible. Unless the union members can carry on their dispute with the non-union employees until a majority join the Union, the ultimate result must necessarily be the destruction of the effectiveness of unionism, since the example of the "free rider" is bound to affect the union man's own desire and incentive to remain in the Union.

In the light of these considerations, the testimony of the Union representative (R. 225-226, 229, 231-232), so strongly relied upon by the Michigan Court (R. 276), that the Union members would consider themselves in dispute with the non-union employees until a majority of such non-union employees voluntarily joined the Union, regardless of whether the employer unilaterally met the Union conditions, is not only completely in accord with economic reality, but, in fact, is merely another way of saying that the picketing is for the purpose of attaining "satisfactory hours and wages and working conditions in industry **and a bargaining position which makes these possible** * * *." **Thornhill v. Alabama**, 310 U. S. 88, 103. (Emphasis ours.)

For, until the Union represents a majority of the employees, it cannot demand or receive a contract from the employer which will fix each and every term and condition of employment, considered material by it, for a definite period of time, and thus protect the Union standards established by contracts with the employer's competitors.

Petitioners have no quarrel with the "unlawful objective" or "no labor dispute" doctrines as such, when applied to the narrow situations in which they have been applied by this Court in **Ritter's Cafe**, supra (no industrial nexus); **Giboney**, supra (picketing in support of Union demands for a contract which would be violative of state anti-trust laws); **Hughes**, supra (picketing in support of

a demand by a minority group for proportionate hiring). **Hanke**, supra (picketing in support of a demand for unionization of a self-employed business man) or **Gazzam**, supra (picketing in support of the Union's demand for a closed shop). The evil here lies in the extension of such principles to picketing for the purpose of publicizing the non-union status of employees whose competition is destructive of Union standards, and who have the right to join or refuse to join a union without either choice being violative of State Law or Policy.

To hold, as did the Michigan Supreme Court here, that such peaceful picketing for such purpose may validly fall within the ban of state statute or state policy prohibiting the use of "force" or "unlawful threats" to achieve union membership is to destroy entirely the right and substance of peaceful picketing in cases where the direct employer-employee relationship does not exist between the members of the Union and the employer. **Swing** case, supra. For, as demonstrated above, to limit the right of picketing to such point in time when an employer may unilaterally meet, or claim to have met, prevailing union standards is to empty of all meaning the right to attain a "collective bargaining position which makes these (satisfactory hours and wages and working conditions) possible." **Thornhill v. Alabama**, supra.

Surely here the State of Michigan has proscribed picketing by "setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute." **International Brotherhood of Teamsters v. Hanke**, 339 U. S. 470, 479-480.

CONCLUSION.

It is respectfully submitted that this case presents a question of transcendent importance in the application of the protective scope of the Fourteenth Amendment to peaceful picketing activities, and for that and the foregoing reasons this Petition for Writ of Certiorari to the Supreme Court of the State of Michigan should be granted.

Respectfully submitted,

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DEC 15 1952

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

Docket No. 446

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION No. 406, PAT MACKEY, JACOB DERTIEN and ROBERT SWITZER,
Petitioners,

vs.

HAROLD F. POSTMA, doing business as HAROLD F. POSTMA GRAVEL COMPANY, H. F. POSTMA GRAVEL CO., a Michigan corporation,
Respondents,

CLARENCE DE BOER, LEONARD LOVINS, FLOYD FREEMAN, DAVID VANDER KOOI, FLOYD J. POSTMA, FREDERICK J. KATSMA, FRANK DIEPSTRA, JR., LOUIS HOEZEE, HAROLD DUNHAM and JOE POSTMA,
Intervenors.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITIONERS' PRAYER FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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AMERICAN BRIEF AND RECORD COMPANY, GRAND RAPIDS 2, MICHIGAN

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STATEMENT

We desire to correct the inference made by counsel for petitioners in their statement as found on pages 5 and 6 of their petition. This statement is as follows:

> "Those negotiations broke down, the employers claiming that they would be unable to continue even some of the working conditions then prevailing un-

> der the expired agreements, such as guaranteed daily pay, since the respondent Company was paying rates as low as 82 cents per hour and was making it impossible for the other employers in the area to compete fairly with the respondent Company (R. 147, 161, 170, 194-198, 214, 248). It is admitted that the employees of the Company do not receive many of the guarantees which the organized employees receive such as minimum daily hours of work, daily overtime, etc. (R. 146-147, 203-206, 207-210, 213-214, 226; Defendants' Exhibit 3)."

The statement that respondent company was paying rates as low as 82 cents per hour is based upon Exhibit 2 found on page 248 of the record. Exhibit 2 purports to be a pay roll statement of one Arthur Henry Roobol, employed by Harold F. Postma Gravel Company. This was for a period of one week in June of 1949. The record does not disclose in what capacity Roobol was employed. It does not appear whether he was a truck driver, a yard man, a crane operator, or a water boy. This is substantially the whole basis of defendants' argument that plaintiff was not paying wages which were generally being paid in this employment.

The record further shows from the testimony given by Clarence De Boer, one of the intervening plaintiffs, that he was receiving $1.50 per hour and a $100 bonus around Christmas time, that he received two weeks' vacation, and that his vacation he believed depended upon the length of service (R. 110).

On page 7 it is stated:

> "The purpose of the picketing was to advise the public that the Union considered the company 'unfair' because it was paying a lesser wage, in the hope that people who were favorable to the Union cause would be encouraged to place their orders with those companies which were paying the higher Union standards of wages and working conditions that existed in the area."

Pat Mackey, one of the defendants, was the Secretary and Treasurer of the Union and one of its full time employees. He testified:

"Q. I said who were you disputing with down at Postma's? You talk about a dispute.

A. Postma Gravel and the employees of Postma Gravel.

Q. You say you had a dispute with the employees of Postma Gravel?

A. Yes.

Q. What kind of a dispute?

A. I had a dispute that they have been holding us back in wages; *they have not joined our Union;* they are keeping our general working conditions in the gravel industry down (225).

• • •

Q. Didn't you just answer that you were having a dispute with Postma Gravel?

A. Yes, I agree when I understand your question.

Q. Yes.

A. I said I had a dispute with Postma and employees both.

Q. What kind of a dispute were you having with the employees of the Postma Gravel Company?

A. Dispute that they were breaking down and holding down our wage structure, *about not joining our Union* and getting the benefits" (225-226).

Again on re-direct examination this witness testified:

"Q. Mr. Mackey, even if all of the employees at the Postma Sand and Gravel Company were getting at least or more than the uniform wage scale you have negotiated with the other two gravel companies, but if they still were not members of your Union would you consider your Union to be in dispute with those employees?

A. Yes, sir.

• • •

Q. Will you state whether or not under the circumstances which I have just described the organization would consider itself to still be in dispute with these employees?

A. Yes, we would" (228-229).

On re-cross examination this witness testified:

"Q. If I get your testimony correctly on re-direct examination by your counsel, the only condition

that would ever remove the question of dispute between you and Postma employees would be getting them into membership in your Union, is that right?

A. *Membership in our Union to secure them with contract.*

* * *

Q. I say the only way — it is your contention that the only way that this dispute can ever be removed between your Union and Postma employees is for them to join your Union, is that right?

A. *I believe that they should join our Union;* that they have been getting the benefits that we have negotiated, so why shouldn't they join our Union.

* * *

Q. You wouldn't expect Postma to put his employees into your Union against their will, would you?

A. No, I would not.

Q. You wouldn't want him to, would you?

A. No, I would not.

Q. *But it is your contention that there will always be a dispute between your Union and Postma employees and the Postma Gravel Company until such time as his employees join your Union?*

A. *Until we get on a sound, economical ground.*

Q. *No, but I say until they join your Union, isn't that what you previously testified?*

A. *That is the only way we can arrive at a sound principle"* (231-232).

By reason of the testimony given by Mackey as above quoted, the Michigan Supreme Court stated (page 354):

> "According to Mackey, it would make no difference whether Postma paid as much or more than the uniform wage scale, because he stated that the only way to settle the dispute would be for Postma's employees to join the Union. Defendants' objective, therefore, was to force Postma's employees to become members of the Union."

ARGUMENT AND LAW

Defendants sought to achieve an unlawful labor objective. Therefore the Courts of Michigan have the legal right and power to enjoin picketing for such a purpose.

Petitioners have filed a petition for writ of certiorari to the Supreme Court of the State of Michigan. We assume it will not be necessary to cite authority that this Court will not pass upon questions of fact where there is evidence in the record to sustain the findings of the State court. Section 17.454(18) *Michigan Statutes Annotated* provides:

> "17.454(18) Use of force or unlawful threats with respect to labor organization membership or to force person to refrain from employment; penalty.
>
> Sec. 17. It shall be unlawful for any employee or other person by force or unlawful threats to force, or attempt to force any person to become or remain a member of a labor organization, or for an employee or other person by force or unlawful threats to force or attempt to force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such. (*C. L.* '48, Sec. 423.17)."

The Supreme Court of Michigan held as follows (pages 354-355):

> "In Harper v. Brennan, 311 Mich. 489, and Standard Grocer Co. v. Local No. 406 of the American Federation of Labor, supra, the Court held (the writer of this opinion dissenting) that, under the provisions of the statute (CL 1948, Sec. 423.17, as amended by PA 1949, No. 230 (Stat. Ann. 1950 Rev. Sec. 17.454 (18))) an attempt to force employees to become unionized either directly or indirectly through their employer is not a lawful labor objective. Under the authorities cited, we are obliged to hold that the permanent injunction entered by the circuit court does not violate any of the constitutional rights of the defendants."

Petitioners seek to have the Michigan statute, supra, held unconstitutional as being in violation of rights secured to the petitioners by the Fourteenth Amendment to the Constitution of the United States.

The record is substantially undisputed that the purpose of picketing the plant of Postma, as stated by the testimony of Mr. Pat Mackey, was to force the intervening employees of Postma to become unionized, either directly or indirectly through their employer. If this was an unlawful labor objective under the law, then under the decisions of this Court and of the Supreme Court of the State of Michigan the statute in question is not unconstitutional and the courts of this state have a legal right to enjoin picketing for such a purpose.

The case at bar is governed by the following Michigan decisions:

Silkworth vs. Local 575, *A. F. of L.*, 309 Mich. 746;
Harper vs. Brennan, 311 Mich. 489;
Grocery Company vs. Local No. 406, *A. F. of L.*, 321 Mich. 276;
Sand & Gravel Co. vs. Trades Council, 321 Mich. 361.

In the case of *Silkworth vs. Local, supra,* "peaceful picketing" so-called was enjoined under circumstances very similar to the case at bar.

The plaintiff in that action was a gasoline and fuel oil dealer, supplying retail dealers with those commodities in Washtenaw County and adjacent territory. The plaintiff received its principal supply of petroleum products from the Gulf Refining Company in Toledo by transport trucks, the drivers of which were union members. The management of the plaintiff concern was approached by the defendant union and a demand was made that the initiation fees of its drivers be paid by the plaintiff so that these employees would become members of the union. There was no existing labor dispute between plaintiff and its truck drivers who were not union members. When plaintiff refused the demands of the union a picket line was established at its bulk storage plant in Ypsilanti which resulted in the refusal of the transport truck drivers to deliver any petroleum products to plaintiff and thereby

virtually brought its business to a standstill. Upon application to the Circuit Court a temporary injunction was issued restraining the defendants from picketing and from interfering with plaintiff's business.

It can be readily seen from the above statement of facts that this case presents an analogous situation to the case at bar. In affirming the decision of the lower court the Supreme Court stated (pages 757-758):

> "While recognizing the right to picket peacefully for the purpose of publicizing the facts of a labor dispute, as established by the above authorities, we also recognize that such picketing may become unlawful if directed to the accomplishment of an unlawful purpose. In Lafayette Dramatic Productions, Inc. v. Ferentz, supra (305 Mich. 193) we said, p. 208:
>
> > 'If the object sought to be obtained by defendants was not a lawful labor objective, the court would be justified in exercising control of their acts.'
>
> "See, also, Dorchy v. Kansas, 272 U. S. 306 (47 Sup. Ct. 86, 71 L. Ed. 248); Scavenger Service Corp. v. Courtney (C. C. A.), 85 Fed. (2d) 825; Opera on Tour, Inc. v. Weber, 285 N. Y. 348 (34 N. E. (2d) 349, 136 A. L. R. 267); Fashioncraft, Inc. v. Halpern, 313 Mass. 385 (48 N. E. (2d) 1).
>
> "Therefore, in the present case we must determine whether or not defendants' picketing of plaintiffs' storage plant was for the purpose of obtaining a lawful labor objective. The motive for the picketing that is, the result sought to be accomplished, was a question of fact. The testimony is convincing that defendants' real objective was to compel plaintiffs to put their drivers in defendant union by paying their initiation fees, regardless of whether or not the drivers wished to join. This was not a lawful labor objective. Defendants could not use the lawful means of peaceful picketing to accomplish such unlawful purpose.
>
> "To hold with defendants' contention, under the facts and circumstances shown by the record, would

provide a way whereby employers could be coercively compelled to pay union initiation fees for their employees, regardless of whether or not the employees wished to join the union. Such a course would not be in the furtherance of legitimate union aims and activities, nor would it be for the best interests of unions of employees."

This has been the uniform holding of the Michigan Supreme Court throughout the various labor cases that have come before it.

In the case of *Harper vs. Brennan, Supra,* picketing was restrained where a picket line was established in an effort to compel an undertaking establishment to sign a union contract and pay union dues. The undertaking establishment had no employees but was operated exclusively by its owners although the owners and proprietors of the business had previously been members of the Union and had paid union dues. In this case there were two prevailing opinions, one by Justice Sharpe and one by Justice North. In Justice Sharpe's opinion it was stated (page 493):

"Plaintiffs appeal and urge that a labor dispute, to be lawful, must involve a bona fide controversy over wages, hours, health, safety, collective bargaining or other conditions of employment for the protection of labor from abuses; that in order to justify picketing or boycotting there must be a labor dispute and that in the case at bar there is no labor dispute; that a labor union is subject to State antitrust law and that the provisions in the contracts between the union and the various funeral supply companies are an unlawful combination of union and nonlabor groups in violation of the monopoly statutes of Michigan."

We further quote from his opinion (page 497):

"From the above authorities it is evidence that the constitutional guaranty of free speech does not forbid injunction against peaceful secondary picketing carried on against persons or establishments under all circumstances. Peaceful picketing is not im-

mune from regulations that will protect the interests of the public."

"It is urged by plaintiffs that the provisions in the contract between the union and the various funeral supply companies are an unlawful combination of union and nonlabor groups in violation of the monopoly statutes of Michigan.

"3 Comp. Laws 1929, Sec. 16668 (Stat. Ann. Sec. 28.62), provides:

> 'All combinations of persons, copartnerships, or corporations made and entered into for the purpose and with the intent of establishing and maintaining or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession or business, are hereby declared to be against public policy and illegal and void.'

"Defendants urge that the above statute does not apply to the facts in the case at bar as its purpose is not to control prices or establish and maintain a monopoly of any trade.

"In declaring a public policy the legislature made no distinction between combination of workers and combination of employers. As the statute was designed for the protection of the public, we hold that the statute may apply to labor unions as well as to other organizations.

"There can be no question that the creation of a monopoly is not a lawful labor objective."

In the opinion written by Justice North an exhaustive review of the authorities was made and the law of the case was established. We quote (pages 501-502-503-504):

"The instant case is fraught with such serious consequences that I am constrained to supplement that which has been written by my Brethren. Basically this appeal discloses reliance by the respective litigants upon asserted but conflicting constitutional rights, and such rights of the one must be con-

strued with due regard to the constitutional rights of the other. This concept is not at all novel. For example, freedom of speech and of the press are guaranteed by the Constitution, but in the exercise of neither of these rights may one with impunity indulge in slander, libel, extortion or unlawful coercion.

"Except as otherwise indicated we herein designate the Harper-Mulligan Funeral Home and the three individuals composing that partnership as plaintiffs. These plaintiffs, who have no employees, assert the constitutional right to conduct in a lawful manner their business as funeral directors and embalmers without molestation or restraint by defendants. In Lafayette Dramatic Productions, Inc. v. Ferentz, 305 Mich. 193 (145 A. L. R. 1158), we held, as stated in the syllabus:

> 'The right to enter into and conduct a legitimate business for profit has been and still is, except in time of war, a fundamental concept under the American doctrine of free enterprise.'

"And in Baldwin v. Escanaba Liquor Dealers' Association, 165 Mich. 98, 113, it is stated:

> '"A person's occupation or calling, by means of which he earns a livelihood and endeavors to better his condition, and to provide for and support himself and those dependent upon him, is property within the meaning of the law, and entitled to protection as such."'

"For reasons disclosed in the opinions of my Brothers, defendants for a time picketed and now assert the right to picket plaintiffs' place of business. Defendants contend that, since such picketing is peaceable, it is a lawful exercise of their constitutional right of free speech, notwithstanding it will prevent plaintiffs from carrying on their business, Thus in the asserted lawful exercise of their claimed respective constitutional rights, these litigants have come into conflict. But their asserted rights are relative rights, and determination of defendants' right to picket must be made in the light of the facts of this particular case,

as should be done in all controversies of this type. Baldwin v. Escanaba Liquor Dealers' Association, supra, 111; Roy v. Chevrolet Motor Car Co., 262 Mich. 663.

"Peaceable picketing incident to a legitimate labor objective is lawful. Book Tower Garage, Inc. v. Local No. 415, International Union, U. A. W. A. (C. I. O.), 295 Mich. 580. Otherwise it is not lawful. Silkworth v. Local No. 575 of the American Federation of Labor, 309 Mich. 746. It was there said:

> 'While recognizing the right to picket peacefully for the purpose of publicizing the facts of a labor dispute, as established by the above authorities, we also recognize that such picketing may become unlawful if directed to the accomplishment of an unlawful purpose. In Lafayette Dramatic Productions, Inc. v. Ferentz, supra, we said (p. 208): "If the object sought to be obtained by defendants was not a lawful labor objective, the court would be justified in exercising control of their acts".'

"It therefore becomes essential to determination of the instant case whether under this record there appears a legitimate labor objective in justification of picketing by the defendants' union or its officers. *Broadly, but fairly accurately, it may be stated that to justify picketing a place of business the proprietor thereof or his employees must be involved in a legitimate labor dispute concerning wages, hours, safety, health, right of collective bargaining or some condition of employment for the protection of labor from abuses.* See Lafayette Dramatic Productions, Inc. v. Ferentz, supra. In a decision of the New York court it was said:

> 'This complaint (seeking injunctive relief), therefore, is sufficient as such, unless the purpose of the defendant union must be presumed to be a lawful labor objective, — an activity having some reasonable connection with wages, hours, health, safety, the right of collective bargaining

> or some other condition of employment.' American Guild of Musical Artists, Inc. v. Petrillo, 286 N. W. 226 (36 N. E. (2d) 123).
>
> "Careful review of this record brings the conclusion that there was no controversy whatever between these litigants amounting to or involving a lawful labor objective. Plaintiffs had no regular employees and there was no controversy between plaintiffs and any other persons in their employ. Nor is there any showing of injurious business competition between plaintiffs and other funeral directors or embalmers or others who are members of defendants' union. It necessarily follows that no lawful labor objective is sought to be accomplished by picketing plaintiffs' place of business. *Instead, the sole purpose sought to be accomplished by such picketing is to coerce plaintiffs into signing or continuing a contract in consequence of which plaintiffs would become or continue as members of the defendants' union and be obligated to pay dues of $2 per month. That alone is not, under the circumstances of this case, a lawful labor objective.*"

We believe it is the settled law of Michigan as stated in Justice North's opinion that "to justify picketing a place of business the proprietor thereof or his employees must be involved in a legitimate labor dispute concerning wages, hours, safety, health, right of collective bargaining or some condition of employment for the protection of labor from abuses". We urge that none of these elements are present in the case at bar.

One of the recent Michigan decisions which in our opinion presents a parallel situation to the case at bar is *Grocer Co. vs. Local No. 406 A. F. of L.*, Supra. We further point out that the defendant in this case is the same union as in the case at bar. In this case we find a situation where a wholesale grocery company at Holland, Michigan was picketed and boycotted by the defendant union because it refused to force its employees to join the union against their will. None of the employees were members of defendant union and apparently had no desire to become members although they were given full opportunity to con-

sider the matter and the union was given ample opportunity to present its arguments to the men. We quote from the opinion (pages 295 to 301):

> "On this appeal, the defendant teamsters union claims that there was a lawful labor dispute between the plaintiff or its employees and the defendant union 'which would authorize picketing and boycotting of plaintiff'; and that the injunction deprives the defendant union of freedom of speech, and of property without due process of law. The plaintiff-appellee claims that it was an unlawful labor objective for the defendant union to picket plaintiff's place of business 'to compel the plaintiff to become the agent of the union to organize the plaintiff's employees and put them in the union in spite of the fact that the employees were all opposed to joining the union'. Plaintiff also claims that the United States labor-management relations act of 1947 (the so-called 'Taft-Hartley act') is now before the Court on this appeal.
>
> "The entire problem revolves around the question, 'what is an unlawful labor objective, an "unfair labor practice"; and as to whether an unfair labor practice may be indulged in by either employer or labor organization as an exercise of the freedom of speech guaranteed by the First Amendment to the Constitution of the United States'. The defendants rely on Senn v. Tile Layers Protective Union, 301 U. S. 468 (57 Sup. Ct. 857, 81 L. Ed. 1229); American Federation of Labor v. Swing, 312 U. S. 321 (61 Sup. Ct. 568, 85 L. Ed. 855); Bakery & Pastry Drivers & Helpers Local 802 of the International Brotherhood of Teamsters v. Wohl, 315 U. S. 769 (62 Sup. Ct. 816, 86 L. Ed. 1178); Cafeteria Employees Union Local 302 v. Anglos, 320 U. S. 293 (64 Sup. Ct. 126, 88 L. Ed. (58)). The Senn Case was decided in 1937 and the Swing Case in 1941. They have since been considered and distinguished by this Court in Silkworth v. Local No. 575 of the American Federation of Labor, 309 Mich. 746 (1944), and Harper v. Brennan, 311 Mich. 489 (1945). Also directly affecting the question involved, the labor-management relations act has been enacted by Congress, effective in August, 1947.

"In the Silkworth Case, supra, the defendant union attempted to have the Silkworths induce their employees to join the union by paying the initiation fees. The employers refused to do so, and the union by picketing plaintiffs' wholesale petroleum storage plant attempting to prevent any deliveries being made into or out of the plant. Admittedly the picketing was peaceful. There was no labor dispute between the plaintiffs and their employees, who had declined to join the union. The Court held that it was an unlawful labor objective for the union to picket the employers in order to induce the employers to have their employees join the union by paying their initiation fees, and affirmed a decree of the circuit court enjoining a union 'from picketing plaintiffs' places of business and from in any manner interfering with their business or with the delivery to them of petroleum products'. The Court (syllabi) held:

> 'If the object sought to be obtained by a labor union through peaceful picketing is not a lawful labor objective, a court would be justified in exercising control of its acts.
>
> 'Where the real objective of defendant labor union in picketing plaintiff employers' bulk oil storage plants was to compel them to put their drivers in defendant union by paying their initiation fees regardless of whether or not the drivers wished to join, the use of the lawful means of peaceful picketing was not permissible since the labor objective was not a lawful one.'

"The only distinction between the Silkworth Case and the instant case lies in the fact that here the union is attempting to coerce the plaintiff employer to have its employees join the union by whatever means the employer may see fit to adopt, in order to save its business from harm; while in the Silkworth Case the specific demand was that the employers pay the fees to accomplish the same result. Both attempts are equally unfair labor practices. Subsequent to the decisions in the Senn and Swing Cases such attempts have been declared unfair labor practices by Con-

gress, in the 1947 labor-management relations act. While I believe that the decision of this Court in Silkworth v. Local No. 575 of the American Federation of Labor, supra, should be said to control decision in the instant case, I have reached the conclusion that the question of what is an unlawful labor objective, an 'unfair labor practice,' is now settled by the labor-management relations act of 1947 and that we need not resort to previous decisions of the United States supreme court, or of this Court.

"Section 8 (a) of the 1947 labor-management relations act provides among other things:

> 'It shall be an unfair labor practice for an employer — (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;'

"Section 7 of the act provides:

> 'Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).'

"Section 8 (a) (3), the section above referred to, has no application to the situation before us. Thus it is apparent from the record here that the defendant union, by picketing plaintiff's establishment, seeks to compel the plaintiff 'to interfere with * * * or coerce (its) employees in the exercise of the rights guaranteed in section 7'; while section 7 plainly declares that employees shall have the right to refrain from joining a labor organization. Obviously the defendant union thus attempts to compel the plaintiff to do what section 8 (a) (1) of the labor-management relations act expressly declares to be an unfair labor practice.

"Section 8 (c) of the labor-management relations act in substance and effect provides that the dissemination of any views, argument or opinion shall not constitute an unfair labor practice. This puts into the act the guarantee of free speech provided for in the First amendment to the United States Constitution. However, it must be read in connection with the provisions of section 7 and section 8 (a) (1) hereinbefore quoted. All parts of the act must be read together and if possible given reasonable effect. Section 8 (c) does not nullify the express declarations in section 7 and section 8 (a) (1).

"The most recent case called to our attention is Fred Wolferman, Inc. v. Root, 356 Mo. 976 (204 S. W. (2d) 733), decided by the supreme court of Missouri September 8, 1947. In that case, the plaintiff operated four retail grocery and meat markets in Kansas City and employed 19 butchers. The two defendants, the business agent and the president of a meat cutters and butchers union attempted to induce plaintiff's butchers to join the union, but they voted against joining. The defendants demanded the plaintiff's executives use their influence to force the butchers to join, threatened to cut off deliveries. Plaintiff refused to sign a contract, and the union picketed plaintiff's places of business. As a result, practically all of plaintiff's supplies and deliveries were cut off. The picketing was peaceful. The plaintiff obtained an injunction restraining the picketing 'on the ground it was being carried on for an unlawful purpose, namely to coerce plaintiff into signing a contract with defendants' union and to force plaintiff to coerce its butchers into joining defendants' union.' The trial court enjoined the defendants from demanding that the plaintiff enter into a contract or require its employees to join the union, but refused to enjoin the peaceful picketing, and from that refusal the plaintiff appealed. The supreme court of Missouri said that the issue narrowed down to the single question whether the picketing was for an unlawful purpose and held that under the national labor relations act the picketing, being at least in part for an unlawful

purpose, should be enjoined. We quote at length and with approval from the opinion. The court said:

> 'Under the national labor relations act some of the original purposes of the picketing were clearly unlawful because an employer subject to the act may not encourage or discourage membership in any labor organization, and may contract only with the representatives of the majority. 29 USCA Paras. 158, 159. And see National Labor Relations Board v. Electric Vacuum Cleaner Co., Inc., 315 U. S. 685 (62 Sup. Ct. 846, 86 L. Ed. 1120).
>
> 'While peaceful picketing for lawful purposes has long been upheld in this State, still the rule is well established here that where the purpose of concerted action by labor is unlawful such action may be enjoined (citing cases). * * *
>
> 'However, we observe in passing that this court has also long recognized the connection between peaceful picketing and the constitutional guaranty of free speech (citing cases).
>
> 'Thus, the only question for decision is whether defendants have, in fact, renounced their unlawful purposes in picketing plaintiff's stores as the trial court found.
>
> 'The determination of the purpose of object sought to be accomplished by picketing is one of fact.
>
> 'The answer, as quoted from above, contains allegations which specifically assert a wrongful purpose under the facts of the case, namely that defendants picketed plaintiff's stores to force plaintiff to enter into a contract with the union. The answer also states the picketing is for the purpose of informing the public of plaintiff's conduct. What conduct? Clearly it must be plaintiff's refusal to bow to defendants' unlawful demands. True, the answer also states the picketing is for the additional purpose of informing

the public of the refusal of plaintiffs' butchers to join the union but the other allegations of the answer remain unchanged and uncontradicted and in effect admit the unlawful purpose.

'In defendants' evidence there is some testimony that defendants desired to continue picketing for the purpose of informing the public that plaintiff's butchers are largely nonunion. However, there is also testimony that deliveries to and from plaintiff's stores were stopped for the purpose of putting economic pressure upon the plaintiff so that it in turn would force its butchers to join the union. But there is no evidence of any renunciation on the part of defendants.

'Both the answer and the evidence do disclose that one of the purposes for the picketing is for giving information to the public. While we assume that purpose if lawful still when it is coupled, as it is here, with unlawful purposes, the fact one of several purposes is lawful does not make the picketing lawful. Picketing for both lawful and unlawful purposes is unlawful. See 4 Restatement, Torts, Sec. 796. Cf. Baush Machine Tool Co. v. Hill, 231 Mass. 30 (120 N. E. 188); Folsom Engraving Co. v. McNeil, 235 Mass. 269 (126 N. E. 479).'

"The court then discussed the Senn Case, the Swing Case and others relied upon by appellants in the instant case, and concluded as follows:

'We are of opinion that none of the cases relied upon by the defendants, which we have already discussed, is authority for any principle that picketing by workmen in concert to persuade or induce an employer to do an unlawful act, one condemned by statute as an unfair labor practice and contrary to the defined public policy of the commonwealth and of the nation, is permissible under the constitutional guaranty of freedom of speech, or otherwise.'

"February 16, 1948, the United States supreme court denied certiorari in the above case. 333 U. S. 837 (68 Sup. Ct. 608, 92 L. Ed. 1121)."

In *Sand and Gravel Company vs. Trades Council,* supra, we submit the case cannot be distinguished from the one at bar. Mr. Justice Reid, speaking for the court in affirming a decree for plaintiff, used the following language (pages 365-366):

"The trial court in his opinion found:

> 'We think the purpose of the picketing in this case was to coerce the employer to bring pressure upon his employees to join a union. Such conduct on the part of the employer * * * (would violate) the Michigan statute (Stat. Ann. 1944 Cum. Supp. Sec. 17.454 (18)) * * * and the violation of this statute is the unfair labor practice that makes this picketing a matter for the operation of an injunction in this case.'

"A careful consideration of the entire record convince us of the correctness of the finding of fact just cited. The purpose of the picketing was to cause that the truck drivers, who were union members, would not go through the picket line with their trucks in the necessary and essential operation of transporting plaintiff's materials and products to and from its plant, and thus to compel the plaintiff company, in order to continue its operations, to sign a closed-shop agreement, the result of which signing would be to compel the employees to join a union which they had announced they did not choose to join, in violation of Act No. 176, Sec. 17, Pub. Acts 1939 (Comp. Laws Supp. 1940, Sec. 8628-17 Stat. Ann. 1947 Cum. Supp. Sec. 17.454 (18)).

"Silkworth v. Local No. 575 of the American Federation of Labor, 309 Mich. 746, we say at page 758:

> 'The testimony is convincing that defendants' real objective was to compel plaintiffs to put their drivers in defendant union by paying their initiation fees, regardless of whether or not the

> drivers wished to join. This was not a lawful labor objective. Defendants could not use the lawful means of peaceful picketing to accomplish such unlawful purpose.' "

The placards carried by the pickets in the case at bar were untrue and libelous. The gravel company was not unfair to organized labor in refusing to force its employees into a union against their will. As pointed out in the Grocer Co. case, if any unfairness toward the union was displayed it was by the employees rather than by the employer. Had a majority of the gravel company employees become members of the defendant union, the company would have been forced to negotiate with it; but upon continued refusal of the employees to join the union the company was not obliged under the law to enter into any negotiations with the union, and when the union attempted to coerce it into doing so it overstepped the bounds and was properly restrained.

This Court in four recent decisions has clarified the case law to a great extent in relation to picketing. It is our claim that these cases are authority for the proposition that a state may declare its own policy in relation to picketing and that this policy cannot be successfully attacked on the ground that it violates the 14th amendment to the Constitution. The cases are *Hughes, et al vs. Superior Court of California for Contra Costa County,* (decided May 8, 1950), 339 U. S. 460; *International Brotherhood of Teamsters, et al vs. Hanke,* (decided May 8, 1950), 339 U. S. 470; *Building Service Employees International Union, et al vs. Gazzam,* (decided May 8, 1950), 339 U. S. 532. *Giboney vs. Empire Storage & Ice Co.,* 336 U. S. 490. These decisions merit some discussion.

In the Hughes Case, Supra, a retail chain store known as Lucky Stores, Inc. was picketed by an organization known as Progressive Citizens of America because it refused to hire negro clerks in its store in proportion to the percentage of negro trade that it had which was estimated to be about 50%. The placards of the pickets read "Lucky won't hire negro clerks in proportion to negro trade — don't patronize". The picketing was unaccompanied by any violence and the truthfulness of the statement con-

tained on the placard could not be denied. In this respect it differs from the placards used in the case at bar because the gravel company asserts that it was in no sense unfair to organized labor. We quote from the opinion of the Court:

> "Second. 'The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states,' Palko v. Connecticut, 302 U. S. 319, 327, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in Bakery & Pastry Drivers & Helpers Local v. Wohl, 315 U. S. 769, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word. See Gregory, Labor and the Law 346-48 (rev. ed. 1949); Teller, Picketing and Free Speech, 56 Harv. L. Rev. 180, 200-02 (1942); Dodd, Picketing and Free Speech: A Dissent, 56 Harv. L. Rev. 513, 517 (1943); Hellerstein, Picketing Legislation and the Courts, 10 N. C. L. Rev. 158, 186-87, n. 135 (1932).
>
> "Third. A State may constitutionally permit picketing despite the ingredients in it that differentiate it from speech in its ordinary context. Senn v. Tile Layers Protective Union, 301 U. S. 468. And we have found that because of its element of communication picketing under some circumstances finds sanction in the Fourteenth Amendment. Thornhill v. Alabama, 310 U. S. 88; American Federation of Labor v. Swing,

312 U. S. 321; Bakery & Pastry Drivers & Helpers Local v. Wohl, 315 U. S. 769; Cafeteria Employees Union v. Angelos, 320 U. S. 293. *However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance.* See Dorchy v. Kansas, 272 U. S. 306; Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U. S. 287; Hotel and Restaurant Employees' International Alliance v. Wisconsin E. R. B., 315 U. S. 722; Giboney v. Empire Storage & Ice Co., 336 U. S. 490. 'A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' Bakery & Pastry Drivers & Helpers Local v. Wohl, supra at 775'.

* * *

"Fourth. *The fact that California's policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial.* Castillo v. McConnico, 168 U. S. 674, 684; Hebert v. Louisiana, 272 U. S. 312, 316; Nashville, C. & St. L. R. Co. v. Browning, 310 U. S. 362, 369; Skiriotes v. Florida, 313 U. S. 69, 79; Snowden v. Hughes, 321 U. S. 1, 11. For the Fourteenth Amendment leaves the States free to distribute the powers of government as they will between their legislative and judicial branches. Dreyer v. Illinois, 187 U. S. 71, 83-84; Solish v. Heskin, 222 U. S. 522, 524; Erie R. Co. v. Board of Public Util. Comm'rs, 254 U. S. 394, 413; Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 225; Keller v. Potomac Elec. Power Co., 261 U. S. 428, 443. 'Rights under that amendment turn on the power of the State, no matter by what organ it acts.' Missouri v. Dockery, 191 U. S. 165, 170-71.

"It is not for this Court to deny to a State the right, or even to question the desirability, of fitting its law 'to a concrete situation through the authority given

> * * * to its courts'. Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., supra at 297. It is particularly important to bear this in mind in regard to matters affecting industrial relations which, until recently, have 'been left largely to judicial lawmaking and not to legislation'. Carpenters & Joiners Union v. Ritters's Cafe, supra at 724. In charging its courts with evolving law instead of formulating policy by statute, California has availed itself of the variety of law-making sources, and has recognized that in our day as in Coke's 'the law hath provided several weapons of remedy.' Coke, The Compleat Copyholder, Sec. 9 in Three Law Tracts (1764). California chose to strike at the discrimination inherent in the quota system by means of the equitable remedy of injunction to protect against unwilling submission to such a system. It is not for this Court to deny to California that choice from among all 'the various weapons in the armory of the law'. Tigner v. Texas, 310 U. S. 141, 148."

The italicized quotation is particularly significant that picketing is not the equivalent of speech as a matter of fact and it is not beyond the control of a state to restrain it.

In the *Hanke* Case, supra, the Court stated (page 474):

> "Here, as in Hughes v. Superior Court, ante, p. 460, we must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech. Our decisions reflect recognition that picketing is 'indeed a hybrid'."

In the *Gazzam* Case, supra, the employer operated a small hotel at Bremerton, Washington. All of his employees were non-union. The union attempted to organize them and were given ample opportunity to do so. When none of the employees could be induced to join the union the employer refused to negotiate or sign a contract with the union whereupon his place of business was picketed. Here again we find the United States Supreme Court recognizing that the State of Washington, as did the State of

California, has the right to formulate its own policy in relation to peaceful picketing. We quote from a portion of this opinion (pages 536-537):

> "This Court has said that picketing is in part an exercise of the right of free speech guaranteed by the Federal Constitution. Cafeteria Employees Union v. Angelos, 320 U. S. 293; Bakery & Pastry Drivers & Helpers Local v. Wohl, 315 U. S. 768; American Federation of Labor v. Swing, 312 U. S. 321; Carlson v. California, 310 U. S. 106; Thorndill v. Alabama, 310 U. S. 88; Senn v. Tile Layers Union, 301 U. S. 468. *But since picketing is more than speech and establishes a locus in quo that has far more potential for inducing action or nonaction than the message the pickets convey, this Court has not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity.* Thus in Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, the picketing in issue, considered in isolation, was peaceful, but had been found to be enmeshed with and set in such a background of violence that it was a part of a pattern of violence. This Court held that peaceful picketing under such circumstances might properly be enjoined by the State."

Mr. Justice Minton noted in his opinion that "No 'labor dispute' as determined by the law of Washington was held to exist in this case" (p. 536). The Court then stated that (pp. 538-9):

> "The meaning and effect of this declaration of policy is found in its (the statute) application by the highest Court of the State to the concrete facts of the instant case. Under the so-enunciated public policy of Washington, it is clear that workers shall be free to join or not to join a union, and that they shall be free from the coercion, interference or restraint of *employers of labor* in the designation of their representatives for collective bargaining. Picketing of an employer to compel him to coerce his employees' choice of a bargaining representative is an attempt

> to induce a transgression of this policy, and the State has restrained the advocates of such transgression from further action with like aim. To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in reliance on the policy is unwarranted encroachment upon rights protected from State abridgment by the Fourteenth Amendment."

The decree of the State Court was affirmed.

The Court discussed *Giboney vs. Empire Storage & Ice Co.*, 336 U. S. 490, where the State law which made the objective of picketing unlawful had criminal sanctions. This Court stated that this made no difference, and said (p. 540): "Here, as in Giboney, the union was using its economic power with that of its allies to compel respondent to abide by union policy rather than by the declared policy of the State." The Court found "no unwarranted restraint of picketing" and affirmed the decree granting the injunction.

The cases cited on page 14 of petitioners' brief have been extensively discussed by courts throughout the country and in legal journals. The test to be applied is labor objective rather than labor dispute, and we discuss the cases cited by petitioners because defendants seem to be urging that a labor dispute necessarily carries with it the right to picket.

After the decision in *Thornhill vs. Alabama*, 310 U. S. 88, it was thought by some judicial and professional authorities that picketing and free speech might be synonymous. An analysis of the case, as well as later cases, makes it apparent that Thornhill did not so hold in spite of rather broad language used by Mr. Justice Murphy in the majority opinion. The case struck down a sweeping anti-loitering and anti-picketing State Statute which was so broad as to be almost meaningless, and which as construed by the Alabama Supreme Court prohibited the publicizing of facts concerning a labor dispute without regard, among other things, to the peaceful character of the pickets' conduct, the nature of the dispute, or the accuracy or restraint of the language used in imparting the information. The most that the case decided, so far as defendants' argument is concerned, is that a State may not enjoin peaceful picketing *solely* on the ground that no "labor dispute" is involved.

Senn vs. Tile Layers Protective Union, 301 U. S. 468, was a five to four decision which held *valid* a Wisconsin Statute legalizing stranger picketing which had once been tortious in that State. Mr. Justice Brandeis observed that nothing in the Fourteenth Amendment *prohibited* "picketing and publicity", the "means" authorized by the Wisconsin Statute. He uttered the sentence which Mr. Justice Murphy quoted in the Thornhill case (p. 478): "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." But Mr. Justice Brandeis did not imply that peaceful picketing is constitutionally protected free speech; and did not declare that a State might not adopt a policy (either by statute or judicial decision) with respect to the right to picket. He simply said that the unions, like everyone else, are entitled to speak freely; and he specifically noted that the issue as to whether there was a "labor dispute" involved "the construction and application" of State law, and "As to them the judgment of its highest Court is conclusive" (p. 477).

Carlson vs. California, 310 U. S. 106, involved a city ordinance with language similar to that found in the Alabama statute considered in the Thornhill case. This Court held that

> "The sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence * * * the ordinance in question here abridges liberty of discussion under circumstances presenting no clear and present danger of substantive evils within the allowable area of State control." (pp. 112, 113).

In *American Federation of Labor vs. Swing,* 312 U. S. 321, Mr. Justice Frankfurter stated, in the majority opinion, that "we are asked to sustain a decree which, for the purposes of this case, asserts as the common law of a State that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him" (p. 325). There

was no statement by the Court that an injunction could not issue in a labor dispute.

In *Bakery & Pastry Drivers & Helpers Local 802 vs. Wohl,* 315 U. S. 769, Mr. Justice Jackson stated that "so far as we can ascertain from the opinions delivered by the State Courts in this case, those Courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes, and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course, that does not follow: One need not be in a 'labor dispute' as defined by State law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, *coercion, or conduct otherwise than lawful or oppressive*" (p. 774) (emphasis supplied). The concurring Justices noted that (pp. 776, 777):

> "Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very essence of the picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence, those aspects of picketing make it the subject of restrictive regulation."

Carpenters & Joiners Union of America, Local No. 213 vs. Ritter's Cafe, decided the same day as the Wohl case, discloses that a State may place limitations on union picketing in a case where a labor dispute is involved.

Cafeteria Employees' Union, Local 302 vs. Angelos, 320 U. S. 293 followed the *Senn, Swing* and *Wohl* cases in reversing decisions which sanctioned injunctions issued by State Courts *solely* on the ground that a "labor dispute" is confined to "an employer and those directly employed by him" (p. 296) but recognizes that there are situations involving "labor disputes" where the injunctive remedy is proper. Mr. Justice Frankfurter, who wrote the unanimous opinions of the Court, explained "But here we have no attempt by the State through its Courts to restrict conduct justifiably found to be an abusive exercise of the right to picket" (p. 295).

In none of the cases cited by the defendants did it appear that the picketing was in violation of any valid statute, ordinance, or common law policy of a State, or that it was for an unlawful purpose.

Thus, it is evident that the "free speech" cases do not have a bearing on this case, because here the test of *lawful or unlawful labor objective* must be applied, as it has been applied by the Supreme Court of the United States when dealing with State action, both statutory and judicial, and by the Supreme Court of the State of Michigan.

We submit that since the purpose of the picketing was to force the ten employees of defendant Postma (intervening plaintiffs) to become members of petitioners' Union, this was such an unlawful labor objective as is prohibited by the statute, and that this statute under the decisions of this Court is constitutional as applied to the facts in the case at bar.

We therefore ask that the prayer of the petition for writ of certiorari be denied.

Respectfully submitted,

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FILED
APR 21 1953
HAROLD B. WILLEY, CL

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

No. 446

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 406, PAT MACKEY, JACOB DERTIEN and ROBERT SWITZER,

Petitioners,

vs.

HAROLD F. POSTMA, Doing Business as HAROLD F. POSTMA GRAVEL COMPANY, H. F. POSTMA GRAVEL CO., a Michigan Corporation,

Respondents,

CLARENCE DeBOER, LEONARD LOVINS, FLOYD FREEMAN, DAVID VANDER KOOI, FLOYD J. POSTMA, FREDERICK J. KATSMA, FRANK DIEPSTRA, JR., LOUIS HOEZEE, HAROLD DUNHAM and JOE POSTMA,

Intervenors.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Intervenors.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners pray that this Court grant rehearing of its order of April 6, 1953, denying the Petition for Writ of Certiorari, and that a Writ issue to review the judgment of the Supreme Court of the State of Michigan in the above entitled case, as prayed for in the Petition filed herein on November 13, 1952.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

The Petition for Writ of Certiorari in this case was filed on November 13, 1952. On January 5, 1953, the Supreme Court of the State of Michigan decided the case of *Teamsters and Truck Drivers Local 164 v. The Way Baking Co.*, 335 Mich. 478, 56 N. W. 357. On March 30, 1953, a Petition for Writ of Certiorari in the *Way Baking Company* case, supra, was docketed in this Court as Case No. 686, October Term, 1952. At the time of filing such Petition, counsel for Petitioner in the instant case, who is also counsel for petitioner in Case No. 686, requested that the Clerk call to the attention of the Court the Petition in such case because of its relevance to the instant case (See copy of letter attached as Appendix A). However, one week after the docketing of Case No. 686, the Petition for Writ in the instant case was denied.

Petitioners believe that in view of the brief period of time between the filing of the Petition in Case No. 686 and the order of denial in the instant case, the Court did not have the opportunity to consider the holding of the Michigan Court in this case in the light of its decision in Case No. 686.

Petitioners further believe that the decision of the Michigan Court in Case No. 686, and the recent filing of the Petition for Writ of Certiorari in such case, are intervening circumstances of substantial or controlling effect within the contemplation of Rule 33 (2). This belief is based on the fact that the subsequent decision of the Michigan Supreme Court in Case No. 686 points up, emphasizes, and makes clear that its ruling in the instant case is based upon the theory that peaceful picketing which may result in loss of business to the picketed employer and his non-union em-

ployees constitutes the unlawful use of "force" under the Michigan Statute *solely* because the adverse effect upon the employer *may* cause him to interfere with his employees' right to refrain from union membership or *may* cause the non-union employees to join the union. This principle, established by both cases, that peaceful picketing, unaccompanied by unlawful demands, equals force and coercion, means an end to the right to picket in the State of Michigan for organizational or publicity purposes. It means that unlawful demands or purposes can be inferred from the fact and effects of picketing and nothing more. This Court has consistently held to the contrary. *Thornhill v. Alabama,* 310 U. S. 88; *Carlson v. California,* 310 U. S. 106; *American Federation of Labor v. Swing,* 312 U. S. 321; *Bakery and Pastry Drivers v. Wohl,* 315 U. S. 769; *Cafeteria Employees Union v. Angelos,* 320 U. S. 293.

The salient facts in the *Postma* case, No. 446, and in the *Way Baking* case, No. 686, are strikingly similar: The unions in both cases represent most of the employees in the industry involved. None of the employees of either company are members of the union involved. Accordingly, no demands have been made by either union upon either company concerning that company's employees. Many attempts were made by both unions to persuade the employees to join the union. Efforts by the two unions to improve wages and working conditions of their own members working for competitors of the two companies have been impeded because of the inferior working conditions existing at respondent companies. Each union engaged in peaceful, truthful picketing to publicize the non-union status of the employees. Additionally, in Case No. 686, the union engaged in picketing of the company's products at retail food stores and restaurants.

The object of the picketing in each case was to bring the situation to the attention of the public, and to protect the

union's standards, either by organizing the non-union employees or by diverting patronage to those companies which were paying the higher union standards of wages and working conditions. In both cases such peaceful picketing was enjoined as the result of the application of the same statute [C. L. 1948, Par. 423.17 (as amended by Act No. 230, P. A. 1949, Stat. Ann. Par. 17.454 (18)] which makes it unlawful "for any employee or other person by force or unlawful threats to force, or attempt to force any person to become or remain a member of a labor organization * * *".

The two cases thus closely parallel each other both in their facts and in the rule of law involved. The real mischief in both cases is emphasized in Case No. 686, wherein the Michigan Court extended its ruling in the instant case to peaceful picketing of the employer's products at their point of sale to the public for the sole purpose of appealing to the public not to purchase such products because of their delivery by non-union truck drivers.

Because the two cases, considered together, cast substantial doubt upon the existence of any right to peacefully picket in the State of Michigan for publicity or organizational purposes, the Petition in the instant case and the Petition in Case No. 686 should be considered together.

CONCLUSION.

For the reasons set forth above and in the Petition for the Writ of Certiorari it is respectfully urged that rehearing be granted and that this Court consider the Petition for Writ of Certiorari in this case along with that in the case of *Way Baking Co.*, No. 686, which is presently pending before this Court. Upon such rehearing it is urged a Writ of Certiorari issue to the Supreme Court of the State of Michigan.

Respectfully submitted,
DAVID PREVIANT,
Counsel for Petitioners.

Dated April 20, 1953.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the Rules of this Court.

DAVID PREVIANT,
Counsel for Petitioners.

APPENDIX "A"

March 27, 1953.

Clerk of the Supreme Court
of the United States,
Washington, D. C.
Dear Sir:

RE: TEAMSTERS AND TRUCK DRIVERS LOCAL NO. 164, AMERICAN FEDERATION OF LABOR, ET AL. vs. THE WAY BAKING COMPANY, a Michigan Corporation, October Term, 1952

We are enclosing herewith one signed Petition for Writ of Certiorari to the Supreme Court of the State of Michigan in the above entitled matter. We are sending you under separate cover an additional forty (40) copies of this Petition.

We would appreciate it greatly if this Petition will be called to the attention of the Court in connection with our Petition in *International Brotherhood of Teamsters v. Postma*, Case No. 446, October Term, 1952, filed November 13, 1952. We make this suggestion since both Petitions involve decisions of the Supreme Court of the State of Michigan on the same subject matter, that is, restraint of peaceful picketing, and because the instant Petition makes reference to the earlier one. It, therefore, may be helpful to the Justices to have both Petitions before them in coming to

their determination whether the decisions of the Michigan Supreme Court with respect to peaceful picketing are such that it is desirable to issue the Writ in both cases.

Since the Court may be ready to announce its action on Case No. 446 on its next decision day, we would appreciate it if the instant Petition will be called to its attention now.

Please acknowledge receipt and filing of the above and send to us the customary forms of admission of service by Counsel for Respondents.

Very truly,

PADWAY, GOLDBERG & PREVIANT,
By DAVID PREVIANT (Signed).